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ABSTRACT

Although scholars know a great deal about how argument works in the small group process in general, little is known about the role of argument in the jury decision making process. A study used R. A. Meyers' (1991) coding scheme to analyze the argument in 80 juries. Subjects were 209 males and 203 females enrolled in communication courses at a large midwestern university. Juries consisted of groups of four, five, or six members. Juries watched either a 12-minute videotaped segment of a man accused of possession of marijuana, or a 20-minute segment of a man accused of murder. Both cases were somewhat complex in that the decisions could have gone "either way." Jurors were given no instruction in the law and were given up to 30 minutes to reach a verdict. Results indicated that jurors use assertions and agreements most often, followed by propositions, elaborations, and nonrelated arguments. Results also indicated that similar arguments are made by jurors in trials of differing magnitude. Findings suggest that juries are active, deliberative decision making bodies, although the argument that occurs during jury deliberation may not be complex. (Contains 50 references and a table of data. A portion of Meyers' argument category scheme is attached.) (RS)

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Twelve Angry Jurors?:
Argument in the Jury Decision Making Process

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Twelve Angry Jurors?

Argument in the Jury Decision Making Process

Abstract

Although scholars know a great deal about how argument works in the small group process in general, little is known about the role of argument in the jury decision making process. This study utilizes Meyers et al.'s (1991) coding scheme to analyze the argument in 80 juries. Results indicate that jurors use assertions and agreements most often, followed by propositions, elaborations and nonrelated arguments. Findings also revealed that similar arguments are made by jurors in trials of differing magnitude. Conclusions are drawn regarding the simplicity of the argumentation and the use of the coding scheme.

Twelve Angry Jurors?:
Argument in the Jury Decision Making Process

In the movie Twelve Angry Men, Henry Fonda successfully sways eleven jury members to his point of view through the use of effective argument. While the movie is quite captivating and dramatic, research in the area of jury decision making concludes that, in reality, it is quite rare that a lone juror would be able to convince the rest of the jury to change their minds (Rieke & Stutman, 1990, p. 233). However, the interactions between the jurors in the movie suggest that a great deal of argument may take place in the jury room, regardless of outcome. Although jury decision making has been the subject of much study, little research has focused on how argument functions in deliberations. Therefore, by viewing the jury as a small group and drawing from research in the area of small group argumentation, this essay will examine the role of argument in the jury deliberation process.

Review of Literature

Small Group Argument

The study of argumentation in the small group has blossomed over the last decade (Meyers, Seibold & Brashers, 1991). For example, Pace (1985) found that argumentation patterns differ between high and low consensus groups, and Garlick and Mongeau (1993) discovered that the quality of argument influences the minority in consensus-seeking groups. Scheidel (1987) suggests that the leader might play a role in advancing arguments in groups.

In addition, group members feel that behaviors such as amplifying ideas and documenting assertions are the main contributors to a high quality decision (Gouran, Brown & Henry, 1978). In fact, research by Hirokawa et al. suggests that there is a relationship between group interaction and the quality of the group decision (see, for example, Dace & Hirokawa, 1987; Hirokawa, 1980; Hirokawa, 1982a; Hirokawa, 1982b; Hirokawa, 1985; Hirokawa, 1988; Hirokawa & Pace, 1983).

Thus, the role of argument in the small group is immutable. Argument functions as advocacy, discovery, clarification, unification, relationship management, norming, impression management (Hirokawa & Scheerhorn, 1985) and social influence (Stasser, Kerr & Davis, 1989). Gouran (1985, p. 728) concludes that argument "contribut(es) to the outcomes that decision-making groups achieve and ... influenc(es) relationships that develop among their members " (see also Brashers & Meyers, 1989; Gouran, 1982).

Recent work in the study of argument in small groups has its roots, to some extent, in group polarization research from the field of social psychology. Moscovici and Zavalloni (1969) contend that the group serves as a polarizer of opinions. Extending upon these results, Burnstein and Vinokur (1975, 1977) argue that group members, upon hearing the choices made by others in the group, think about arguments that others might have regarding their choices. At that point, they make their choice shifts as a result of those new arguments; this phenomena is known as Persuasive

Argument Theory (PAT). Further research reveals that valid and novel arguments tend to lead to greater polarization than non-valid or non-novel arguments (Vinokur & Burnstein, 1978). Recently, communication scholars have been interested in group polarization, investigating concepts such as the role of personality in group argumentation (Alderton, 1982; Alderton & Frey, 1986), examining PAT's effect on decisional outcome (Mabry, VanLear, Jackson, & McPhee, 1991), and exploring the effect of the number and distribution of arguments on post-discussion shifts (Meyers & Seibold, 1989).

Specifically, attention has turned to examining group argumentation from a structurational perspective (see, for example, Gouran, 1990; Meyers, 1989a; Meyers, 1989b; Meyers & Seibold, 1990; Seibold, McPhee, Poole, Tanita & Canary, 1981; Seibold & Meyers, 1988). In basic terms, the structurational theory of group argument holds that argument is produced and reproduced in interaction, and therefore becomes the system and structure of the small group (Meyers et al., 1991, p. 49). In order to analyze the argument structures in small groups, Seibold et al. (1981) devised a coding scheme which has subsequently been revised to best depict the various forms of argument (Canary, Brossman & Seibold, 1987; Meyers, Seibold & Brashers, 1991; Seibold and Meyers, 1986). This extensive line of research reveals that a group's arguments consist of mainly assertions, elaborations and agreement (Meyers, Seibold & Brashers, 1991, p. 47). Meyers' (1991) analysis of these

findings is that either groups are not very complicated, or that it is not possible to measure the complexity of small groups.

Jury Decision Making

Much of the research in jury decision making focuses on the individual juror. Some studies indicate that each juror uses interpretive schemata (Holstein, 1985) and moral reasoning (Lupfer, Cohen, Bernard & Brown, 1987) to support his/her position. Pennington and Hastie posit (1981, 1986, 1991) that jurors evaluate evidence as a story; they make arguments about their view of the story during deliberations.

Research in the area of group deliberations suggests that, first, juries make effective decisions (Bridgeman & Marlowe, 1979; Pettus, 1990). Deliberations consist of discussions about the case and statements about preference for guilty or not guilty verdicts (Tanford & Penrod, 1986). Foss (1976) discovered that the group decision making process is equalitarian, in which all points of view are represented.

Some research has been specific to the role of argument in juries. For example, MacCoun (1990) examined a number of studies using mock jurors and found that jurors experience two sources of influence: normative (pressures by the majority on the minority) and informational (the number and degree of argument persuasiveness). Penrod and Hastie (1980) developed a computer simulation model of a jury deliberation (DICE) which operates under the assumption that deliberation is a "persuasion process in which jurors and groups of jurors (factions) attempt to persuade other

jurors to adopt a particular position" (p. 135). Finally, Boster, Hunter and Hale (1991) tested a linear discrepancy model and, similar to findings related to PAT, concluded that when jurors hear arguments in deliberation, they adjust their opinions to reflect those arguments.

While we know a good deal about how a jury makes a decision, much could be gained by further exploring the role of argument in deliberations. Although scholars are beginning to shed light on argument in small groups, the same results might not be applicable to juries. For instance, not all groups are ad hoc and deliberative in nature. Juries are often asked to make critical decisions not demanded of groups in other settings. Additionally, no other small group is given specific instructions on how to view evidence, few small groups are given unlimited time to deliberate, and no other small group is forced to respond to specific counts/elements. If argument is a critical aspect of small group communication, then it stands to reason that argument is a key component in jury deliberations. In fact, based on the structurational perspective, argument in a jury would define and be defined by the decision making process. Therefore, this study aims to investigate argument in jury deliberations utilizing a structurational coding scheme. The following research question addresses that investigation:

RQ1: What is the distribution of argument acts across all jury deliberations?

Studies indicate that jury deliberation functions differently depending upon the seriousness of the crime (Pettus, 1991). Thus, this study also seeks to compare the types of arguments made by jurors in trials of differing magnitude; i.e., possession of marijuana and first degree murder. The following research questions are posed:

RQ2: What is the distribution of argument acts within the marijuana trial?

RQ3: What is the distribution of argument acts within the murder trial?

Method

The jury deliberations analyzed for this study are part of another investigation examining the role of nonverbal behaviors on jury decision outcome. Only procedures pertinent to the current study are described.

Subjects

Subjects were 209 males and 203 females enrolled in communication courses at a large midwestern university. The subjects comprised 80 total juries of 4 (22 juries), 5 (24 juries) and 6 (34 juries) members. The size of the juries varied according to the number of students who volunteered and appeared at the prearranged date and time. All students received extra course credit for their participation.

Procedures

Jury deliberations. Upon arrival to the lab, jury members were seated in front of a large television screen. They either

watched a 12-minute segment of a man accused of possession of marijuana, or a 20-minute segment of a man accused of murder. Both cases were somewhat complex in that the decisions could have gone either way; the cases were not "obvious." The trial segments were edited from actual trial transcripts, comprising the direct and cross examinations of the defendants. The dialogue between the attorneys and defendants consisted of meaningful discussion of the events surrounding each crime. The tapes were produced by a professional educational television studio with the dramatizations taped in the law school courtroom. Actors were hired to role play the trial participants.

After watching the trial, the jury members were escorted to a conference table and instructed to deliberate as a group until a verdict was reached. Since the purpose of the study was to ascertain how argument operated in deliberations, jurors were given no additional instructions regarding the law. A 30-minute time limit was imposed on all deliberations. After reaching a verdict, the subjects were debriefed and thanked for their participation.

Coding procedures. Transcriptions were made from the videotaped deliberations. The deliberations were unitized into thought units which were then coded over a period of eight weeks by the first author and two trained coders using Meyers et al.'s coding scheme (1991, pp. 54-55).[1] Initial training took place over ten hour-long sessions in which all three coders worked on transcripts extraneous to this study. Coders focused upon the written transcripts, but examined the videotaped sessions when

questions about interpretation arose. When .80 agreement was reached, the two trained coders coded 20 of the the transcripts and obtained .87 agreement. Disagreements were resolved through discussion between the author and the two coders. The remaining transcripts were coded by the author or one of the two trained coders.

Results

As Table 1 indicates, three separate frequency analyses were assessed: a summary across all eighty trials, and summaries for the marijuana and murder trials separately. There were a total of 14,741 thought units, 13,172 of which were argument-related acts, and 1569 were nonargument-related acts. 7477 acts were recorded for the marijuana trial, and 7264 acts were recorded for the murder trial.

Frequency of Acts Across All Juries

Specifically, 5053 of the acts were Assertions, in which jurors made statements about fact or opinion. For example, "I think he had mental problems," "He shot her three times," and "It was a little fishy" were all statements coded as Assertions. The second most frequent argument act was Agreement (4235 acts), or statements that express agreement with other statements. Statements such as "I agree" and "yeah" were placed in this category. Elaborations, or statements providing additional support, were used with some frequency (1329 acts). For example, [he is not guilty because] "I was not convinced that there was marijuana in the ashtray" and "It was all premeditated [assertion].

He went and got his gun, loaded the thing, reloaded the thing, shot it, and shot and shot and shot." Finally, propositions, or statements that call for support, action or conference, also were used frequently (1214 acts). In fact, the jurors asked a great deal of questions such as "What did he mean when he said he wanted to take her out of her suffering?," "How can you determine whether someone's acting to be insane or whether they are insane?," and "Was there marijuana in the pipe?"

Table 1 also points to types of argument that were used infrequently. For example, there were few Arguables in the form of responses, amplifications, or justifications utilized. Jurors used relatively few Promptors in the form of objections or challenges, and few Delimitors in the form of any type of frame. In fact, the next highest category of argument includes the Nonarguables, including process ("Sign the verdict form"), unrelated ("[The judge] irritated me, though") and incompletes (" Til she got..." and "He went insane after...").

Frequency of Acts For Each Type of Trial

An examination of Table 1 indicates that there are strong similarities between the marijuana and murder deliberations. Assertions and Agreements were used most often, followed by Propositions and Elaborations. Nonarguables occurred with some frequency across both types of juries.

Discussion

In general, it appears that jurors make a great deal of assertions, sometimes supported by elaboration. Often, it appears

that other jurors in the group agree with the assertions. At times, it appears that jurors attempt to make arguments, but their thoughts remain incomplete. It is unclear as to whether those thoughts, if completed, would consist of further elaborations or if they would challenge existing arguments. In fact, it appears that little actual debate takes place in deliberations due to the lack of disagreement, and correspondingly lack of responses and amplification of argument. Finally, sometimes jurors find themselves in a discussion of unrelated issues, again pointing to the lack of argument occurring in the group discussion.

There are several general conclusions to be drawn when comparing the results across the different types of trials. First, there was a similar number of arguments made in each type of trial. While it seems possible that more serious crimes deem more arguments, the results of this study suggest that the nature of the trial might have little to do with the number of arguments presented. Additionally, the types of arguments made in each trial situation did not differ. One might expect that jurors would employ more sophisticated argumentative strategies in their attempt to sort through all the facts in more complex trials; additional study ought to be focused in this area. Finally, it appears that there were more unrelated arguments in the marijuana trials, suggesting that those jurors might not have taken the process as seriously as the jurors in the murder trial.

Assertions

Specifically, it is interesting to note the number of assertions in comparison to the other types of argument made in the jury deliberations. Meyers et al. (1991; Meyers, 1991) explain this phenomenon by arguing that, first, groups are non-complex entities in which group members seek adherence by simply making a series of assertions; they are not concerned with critically analyzing arguments. This could certainly be true of juries. Some recent evidence has pointed to the fact that juries make their decisions prior to deliberations (see, for example, Bridgeman & Marlowe, 1979; Leigh, 1984). If so, jurors might be more concerned with reaffirming their decisions and gaining adherence by asserting as many reasons as possible for their particular stance. In that case, there would be less need to critically analyze arguments presented in deliberation. The fact that the percentage of elaborations (9%) is even less than in group discussions (13.4%, Meyers et al, 1991, p. 58) further supports the notion that jurors state their arguments without much evidence or backing.

However, when jurors do not have their minds made up before deliberation, the group process serves an important function (Pettus, 1991). While this study does not delineate juror decision timing, further study ought to investigate whether the number of disagreements and challenges increases in cases in which jurors have not made a decision prior to deliberations. Such study would provide further insight into the role deliberation plays in the trial process.

Additional research has suggested that jurors respond differently regarding decision rule requirements. For example, Nemeth (1977) found that when juries were required to be unanimous, there was more conflict in deliberations, and more jurors were persuaded to change their minds. In the present study, the jurors were told to reach unanimous verdicts; however, it certainly doesn't appear that extensive conflict and decision altering occurred. On the other hand, it is possible that, had they been told to reach a majority decision, for example, the number of assertions and agreements would have been even higher and disagreements and amplications would have been even lower. The relationship of decision rule to juror argument, then, provides ground for additional research as the results have implications regarding Supreme Court decisions about unanimous vs. nonunanimous verdict requirements.

Meyers et al. (1991) provide a second explanation for the number of assertions in group deliberation. They contend that assertions are high due to the fact that the coding scheme cannot detect the intricacies of argument. Coders in this study found some difficulties as described by Seibold et al (1981, p. 670). For example, categorization failures occur when statements fall into no category, or overlap several categories. In this case, jurors frequently used the phrase,"Yeah, but..." On first glance, this is an Agreement-Plus (agreement followed by support), but it is also a Disagreement-Plus (disagreement followed by support), and it could also be an Assertion. Production anomalies occur when

statements fall into a category, but are atypical. The coders discovered that within the Assertions category, there were several types of assertions. Some began with the clear phrase, "I think..." Others were more complex, such as "maybe he never intended to kill her or anyone, but he had a loaded gun." Finally, the coders discovered that jurors frequently responded to assertions made by others, but the responses did not "defend arguables met with disagreement" (Meyers et al., 1991, p. 54). In other words, responses, as viewed by the coders, did not necessarily defend previous arguments, but they were responses to initial assertions nonetheless.

Other categories

As mentioned earlier, it is also interesting to note the number of agreements articulated by the jury members, particularly since the percentage of agreements (28.7%) far exceeded the percentage of agreements in Meyers et al.'s group study (8.2%, 1991, p. 58). It is difficult to determine whether the agreements were genuine, or were used as a filled pause. A cursory glance at the videotapes suggests that it is a combination of both; jurors appeared to listen to others, but also used "yeah" as a filler or segue to their next assertion. It also is difficult to ascertain why the number of agreements in juries is so much higher than in groups. Perhaps jury members felt the need to be polite regarding the issues under deliberation, but that issue goes beyond the scope of this study.

The number of propositions used by the jurors in this study points to another phenomenon that occurs during deliberation. Pennington and Hastie (1987, 1991) found that jurors construct a story by making a series of inferences; Pettus (1991) discovered that jurors have a strong urge to find out what "really happened." By asking questions, jurors construct their stories and "fill in the gaps." This suggests that, while the argument in juries might not be sophisticated and complex, that jurors might be conscientious decision makers.

Finally, it is noteworthy that jurors made many nonrelated arguments. Part of the explanation for that in this case may be that they engaged in a task related to another study which might have triggered some of the conversations. Still, the coders gave the jurors a great deal of leeway in terms of not placing personal stories of marijuana or alcohol possession, or handgun operation in the nonrelated category. If such stories were coded in this form, there would have been an even greater number of nonrelated arguments. The role of such nonarguables ought to be pursued in further research.

As with any study, there are a few limitations to be noted. First, as noted above, there were some difficulties with the coding scheme that might have prevented a full examination of all the argumentative techniques used by the jurors. However, this investigation achieves an important goal of providing an initial view of argument in jury decision making. Second, the research conditions did not replicate actual trials (e.g., the jurors were

students, they only viewed a portion of the trials, neither of the trials were civil cases, and the number of counts/elements was limited). However, a number of scientific and practical considerations preclude an ideal replication of courtroom communication (Miller, Fontes, Boster & Sunnafrank, 1983). Since this study is the first to investigate the nature of juror argument, it was most important to have the opportunity to observe deliberations; the format of the study can now be altered to take other factors into account. Additionally, trial conditions were as realistic as possible, and researchers have reported no differences between university students and jury venire samples on attitudinal and comprehension measures (Pryor, Taylor, Buchanan, & Strawn, 1980).

While there is little chance that a Henry Fonda-like juror could convince an entire panel of eleven other jurors to change their minds, this study provides evidence that argument does occur in jury deliberations. While the argument might not be complex, it certainly suggests that juries are active, deliberative decision making bodies. Further research can only aid us in gaining an even greater understanding of this process.

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Table 1

Frequency and Percentage of Argument Codes For Marijuana Trial, Murder Trial, and Across 80 Deliberations

	MARIJUANA	MURDER	TOTAL
Argument Code	Freq/%	Freq/%	Freq/%
Assertions	2604/34.8%	2449/33.7%	5053/34.3%
Propositions	586/ 7.8%	628/ 8.6%	1214/ 8.2%
Elaborations	704/ 9.4%	625/ 8.6%	1329/ 9 %
Responses	45/ .6%	25/ .3%	70/ .5%
Amplifications	297/ 4 %	272/ 3.7%	569/ 3.9%
Justifications	1/ .01%	5/ .06%	6/ .04%
Agreement	2053/27.4%	2182/ 30%	4235/ 28.7%
Agreement (plus)	156/ 2.1%	149/ 2.1%	305/ 2.1%
Objection	77/ 1 %	75/ 1 %	152/ 1 %
Objection (plus)	36/ .5%	25/ .3%	61/ .4%
Challenge	46/ .6%	36/ .5%	82/ .5%
Frames	38/ .5%	17/ .2%	55/ .4%
Forestall/Secure	16/ .2%	19/ .3%	35/ .2%
Forestall/Remove	6/ .08%	0/ 0 %	6/ .04%
Process	107/ 1.4%	50/ .7%	157/ 1.1%
Unrelated	327/ 4.4%	315 4.3%	642/ 4.4%
Incompletes	378/ 5.1%	392/ 5.4%	770/ 5.2%
TOTAL	7477/99.89%	7264/99.76%	14741/99.98%

Notes

1. Permission of reprint portions of Meyers et al.'s (1991) argument category scheme is being obtained.

Arguables

1. Assertions: Statements of fact of opinion.
2. Propositions: Statements that call for support, action, or conference on an argument-related statement.
3. Elaborations: Statements that support other statements by providing evidence, reasons, or other support.
4. Responses: Statement that defend arguables met with disagreement.
5. Amplifications: Statements that explain or expound upon other statements in order to establish the relevance of the argument through inference.
6. Justifications. Statements that offer validity of previous or upcoming statements by citing a rule of logic.

Reinforcers

7. Agreement. Statements that express agreement with another statement.
8. Agreement (plus). Statements that express agreement with another statement and then go on to state an arguable, promptor, delimitor, or nonarguable.

Promptors

9. Objection. Statements that deny the truth or accuracy of any arguable.
10. Objection (plus). Statements that deny the truth or accuracy oof any arguable then go on to state another arguable, promptor, delimitor, or nonarguable.
11. Challenge. Statements that offer problems or questions that must be solved if agreement is to be secured on an arguable.

Delimitors

12. Frames. Statements that provide a context for and/or qualify arguables.
13. Forestall/Secure. Statements that attempt to forestall refurtation by securing common ground.
14. Forestall/Remove. Statements that attempt to forestall refutation by removing possible objections.

Nonarguables

15. Process. Non-argument related statements that orient the

group to its task or specify the process the group should follow.

16. Unrelated. Statements unrelated to the group's argument or process.
17. Incompletes. Statements that do not provide a cogent or interpretable idea but are completed as a cogent idea elsewhere in the transcript.